

VERMONT LABOR RELATIONS BOARD

GREEN MOUNTAIN EDUCATION )  
ASSOCIATION )  
 )  
v. )  
 )  
CHITTENDEN EAST SUPERVISORY )  
UNION, MOUNT MANSFIELD )  
UNION #17 SCHOOL BOARD, BOLTON )  
SCHOOL BOARD, HUNTINGTON )  
SCHOOL BOARD, JERICHO SCHOOL )  
BOARD, RICHMOND SCHOOL BOARD, )  
UNDERHILL ID SCHOOL BOARD and )  
UNDERHILL TOWN SCHOOL BOARD )

DOCKET NO. 10-18

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to issue an unfair labor practice complaint in this matter. On May 5, 2010, the Green Mountain Education Association (“Association”) filed an unfair labor practice charge against the Chittenden East Supervisory Union, Mount Mansfield Union #17 School Board, Bolton School Board, Huntington School Board, Jericho School Board, Richmond School Board, Underhill ID School Board and the Underhill Town School Board (“Employer”).

The Association contends that the Employers committed an unfair labor practice by issuing employment contracts to teachers in the spring of 2010 for the 2010-2011 school year which did not include teachers receiving step salary increases. The Association asserts that this failure to include step increases in employment contracts also had occurred in the spring of 2009, and that this failure had been rectified through a grievance resolution. The Association alleges that the Employers: 1) violated their duty to bargain in good faith set forth in 21 V.S.A. §1726(a)(5), and 16 V.S.A. §2001, through the action taken in the spring of 2010; and 2) intimidated and coerced bargaining unit members from exercising their contractual rights to file grievances, in violation of 21

V.S.A. §1726(a)(1) and (3), by failing to implement the resolution to the grievance over the same issue last year.

The Employers filed a response to the charge on May 21, 2010, contending that there is no action in this matter which properly can be the subject of an unfair labor practice charge. The Employers contend that there can be no actionable issue unless and until the Employers actually fail to pay step increases during the 2010-2011 school year. The Association filed a reply to the Employers' response on August 2, 2010.

Labor Relations Board Member Leonard J. Berliner has not participated in the Board decision in this matter.

#### Factual Background

The pertinent factual background for deciding whether to issue an unfair labor practice complaint is based on materials filed by the parties and undisputed facts brought forth during the Labor Relations Board's investigation of this charge. Board Executive Director Timothy Noonan had telephone conference calls with the attorneys for the parties on August 27 and September 16, 2010, in furtherance of the Board's investigation of the charge and to informally attempt to resolve issues in dispute pursuant to Section 35.8 of Board *Rules of Practice*.

The Association is the exclusive bargaining representative for the teachers of the Employers. The Association and the Employers were parties to a collective bargaining agreement which expired on June 30, 2008. The parties were unable to reach agreement on a successor agreement, and the Employer imposed terms and conditions of employment on teachers for the 2008-2009 school year. The imposed terms and conditions of employment for the 2008-2009 school year included step salary increases for teachers.

On April 13, 2009, at which point collective bargaining negotiations for the 2009-2010 school year were ongoing, Chittenden East Supervisory Union Co-Superintendents John Alberghini and James Massingham sent teachers a memorandum which provided in pertinent part:

It is that time of the year when we have the pleasure of offering you a contract for the 2009-2010 school year.

This contract is being offered while contract negotiations are still in progress. In the absence of a negotiated agreement, this contract indicates the same salary as last year. A new contract will be issued to you after a new negotiated agreement has been approved by the Green Mountain-NEA and your school board.

. . .

The Association filed a grievance with respect to the teaching contracts not including step salary increases. While the grievance was pending, the parties concluded negotiations for the 2009-2010 school without reaching agreement. The Employers imposed finality on May 18, 2009, setting forth the terms and conditions of employment for the 2009-2010 school year. Co-Superintendents Massingham and Alberghini sent a memorandum to teachers dated June 10, 2009, which provided in pertinent part:

This is an addendum to the teaching contract issued to you earlier this spring. . .

After ending negotiations with the Green Mountain-NEA, we have created a new salary index and schedule in keeping with the new employment agreement. For 2009-2010, several changes affect your placement on the schedule.

. . .

- This letter shows your 2009-10 salary (including a step increase) on the new schedule.

. . .

This memorandum providing for step salary increases reflected the terms of employment established by the Employers when they imposed finality. The memorandum contained no reference to the grievance filed by the Association.

In January 2010, the Employer proposed a collective bargaining agreement to expire June 30, 2011, which provided for no salary step increases for teachers for the 2010-2011 school year. The Employers' proposals also provided: "In the event that a successor to this Agreement has not been ratified by the Board and the Association as of the termination date of this Agreement, no salary schedule advancement shall be provided (vertical or horizontal) unless and until parties have ratified a successor to this Agreement which expressly provides for such salary schedule advancement."

On April 12, 2010, at which point collective bargaining negotiations for the 2010-2011 school year were ongoing, Co-Superintendents Alberghini and Massingham sent teachers a memorandum which provided in pertinent part:

It is that time of the year when we have the pleasure of offering you a contract for the 2010-2011 school year.

This contract is being offered while contract negotiations are still in progress. In the absence of a negotiated agreement, this contract indicates the same salary as last year. A new contract will be issued to you after a new negotiated agreement has been approved by the Green Mountain-NEA and your school board.

. . .

The Association filed the unfair labor practice charge at issue in this matter on May 5, 2010. Co-Superintendents Alberghini and Massingham sent teachers a memorandum dated May 18, 2010, which provided in its entirety:

As you know, the teaching contract you were sent in April contained the following statement:

- This contract is being offered while contract negotiations are still in progress. In the absence of a negotiated agreement, this contract indicates the same salary as last year. A letter indicating your 2010-2011 salary will be issued to you after a new negotiated agreement has been approved by the Green Mountain-NEA and your school board.

This language reflects the same approach the district has followed in prior years when contract negotiations were still in progress at the time teaching contracts

were issued. In those years, teachers received their step increases at the start of the new school year when negotiations were not completed. This will also be the case this year. If negotiations are not completed before the 2010-2011 school year begins, teachers will be granted step increases at the start of the school year.

Also as we have done in prior years, once negotiations are completed, if teacher salaries change as a result of negotiations we will inform you by letter of your new salary.

We hope this clarifies any misunderstanding that might have existed on this issue.

The parties had not completed negotiations by the beginning of the 2010-2011 school year. The approach the Employers took for step increases for the 2010-2011 school year was consistent with the May 18, 2010, memorandum to teachers from the superintendents. Teachers received step increases at the beginning of the 2010-2011 school year.

### Discussion

In deciding whether to issue an unfair labor practice complaint based on this factual background, the Board has discretion whether to issue an unfair labor complaint and hold a hearing on a charge.<sup>1</sup> In exercising its discretion, the Board will not issue a complaint unless the charging party sets forth sufficient factual allegations for the Board to conclude that the charged party may have committed an unfair labor practice.<sup>2</sup>

In deciding whether to issue an unfair labor practice complaint, we do so within the framework of the precedents established by the Board concerning the payment of step salary increases to teachers. The Board has addressed the issue whether employing school boards commit an unfair labor practice by failing to pay teachers experience step increases during the school year following the expiration date of the collective bargaining agreement that provided for such increases, in the absence of a successor agreement and

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<sup>1</sup> 21 V.S.A. §1727(a).

<sup>2</sup> Burke Board of School Directors v. Caledonia North Education Association, 17 VLRB 187 (1994).

prior to the completion of mandated dispute resolution procedures. The Board has applied the standards regulating unilateral changes by employers to conclude that school boards have committed unfair labor practices by failing to pay teachers experience step increases under such circumstances.<sup>3</sup>

However, the Board has made it clear that there is no inherent right to step increases, and the status quo would not be maintained by granting post-expiration experience step increases when none were provided during the life of the agreement which constitutes the status quo.<sup>4</sup> In a case where the expiring contract provided for step increases and the school board proposal for the successor contract provided for no salary increases during the school year following the expiration of a contract, the Board determined that the school board was obligated to pay the step increases at the beginning of that school year when negotiations were not completed. The Board also made it clear in this decision that school boards were allowed to prospectively impose financial conditions of employment on teachers that school year at the conclusion of negotiations without providing for step salary increases, so long as the school board otherwise was acting in good faith and consistent with statutory requirements.<sup>5</sup> In a 1996 case, the Board reiterated that, if negotiations conclude without a successor agreement being reached, school boards are allowed to impose salary rates without provision for step salary increases so long as the school board otherwise was acting in good faith and consistent with statutory requirements.<sup>6</sup>

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<sup>3</sup> Windham Southwest Education Association v. Readsboro Board of School Directors, 15 VLRB 268 (1992). Chester Education Association, 1 VLRB 426 (1978).

<sup>4</sup> North Country Union Education Association v. North Country Union Board of School Directors, 18 VLRB 581 (1995).

<sup>5</sup> Caledonia North Education Association v. Burke Board of School Directors, 18 VLRB 45, 63-66 (1995).

<sup>6</sup> Northeast Kingdom Elementary Teachers Association v. Brighton Board of School Directors, et al, 19 VLRB 146, 161-64 (1996).

The Employers have taken no actions contrary to these precedents in this matter. The Association relies on the April 12, 2010, memorandum from the superintendents to teachers, offering teaching contracts for the 2010-2011 school year which do not provide for step salary increases, to support its allegations that the Employer was refusing to bargain in good faith, and was intimidating and coercing employees in the exercise of their rights. We do not interpret the memorandum to support such an allegation.

Although the memorandum stated that the teaching “contract indicates the same salary as last year”, it cannot fairly be interpreted as indicating that the Employers would not comply with its obligation to pay step salary increases at the beginning of the 2010-2011 school year if negotiations had not been completed at that point. The memorandum notes that “this contract is being offered while contract negotiations are still in progress” and “(i)n the absence of a negotiated agreement.” Such statements were made in the context of ongoing negotiations in which the Employer was proposing no step salary increases for the 2010-2011 school year. The Employer would have been acting counter to its own bargaining proposal by expressly guaranteeing that teachers would receive step salary increases for that year. As indicated above, there is no inherent right to step increases. We decline to infer that the Employers may have been engaging in bad faith bargaining by issuing teaching contracts consistent with its lawful bargaining proposal.

We also do not believe that the April 12, 2010, memorandum would have had the reasonable effect of intimidating and coercing employees in the exercise of their rights. A fair reading of the memorandum results in a conclusion that the Employers were issuing teaching contracts consistent with their bargaining proposal but that this was subject to change based on the result of collective bargaining negotiations with the Association. The memorandum indicates that the teaching contracts not providing for step increases are

being issued in the context of ongoing negotiations, and expressly states that “(a) letter indicating your 2010-2011 salary will be issued to you after a new negotiated agreement has been approved by the Green Mountain-NEA and your school board”.

We are not persuaded by the Association’s assertion that the Employers’ memorandum intimidated and coerced bargaining unit members from exercising their contractual rights to file grievances because it was contrary to the resolution of a grievance over the exact same issue the previous year. In so contending, the Association relies on a memorandum issued the previous year providing for step salary increases subsequent to the Association filing a grievance over an earlier memorandum from the Employers not providing for step increases.

However, the Association has failed to demonstrate that the Employers’ memorandum providing for the payment of step increases the previous year resulted from the resolution of a grievance. Instead, the Employers’ action shortly followed the conclusion of negotiations in which the Employers imposed finality. The memorandum providing for step increases reflected the terms of employment established by the Employers when they imposed finality, and it made no reference to the grievance filed by the Association.

The Employers’ actions subsequent to the April 12, 2010, memorandum reinforce our conclusion that issuance of an unfair labor practice complaint in this matter is not warranted. In a subsequent memorandum dated May 18, 2010, the superintendents informed the teachers that “(i)f negotiations are not completed before the 2010-2011 school year begins, teachers will be granted step increases at the start of the school year.” This clarified any misunderstanding that may have existed about the whether the Employers were acting consistent with the precedents discussed above concerning the



payment of step salary increases. This memorandum made it clear that the Employers would act consistent with such precedents. Subsequently, the Employers demonstrated that they would in fact act consistent with their legal obligations when they granted teachers step salary increases at the beginning of the 2010-2011 school year when negotiations had not been completed.

Based on the foregoing reasons, we decline to issue an unfair labor practice complaint and it is ordered that the unfair labor practice charge filed by the Green Mountain Education Association is dismissed.

Dated this 15th day of October, 2010, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Gary F. Karnedy

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Gary F. Karnedy

/s/ Louis P. Lacroix

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Louis P. Lacroix

/s/ Linda P. McIntire

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Linda P. McIntire